

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PATRICIA BROWN,

Plaintiff,

vs.

CAROLYN W. COLVIN,
ACTING COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,

Defendant.

Case No. 2:14-cv-00616-JAD-CWH

ORDER

This matter is before the Court on Plaintiff's Motion/Application for Leave to Proceed *In Forma Pauperis* (#1), filed on April 22, 2014.

I. In Forma Pauperis Application

Plaintiff has submitted the affidavit required by § 1915(a) showing an inability to prepay fees and costs or give security for them. Plaintiff asserts that she receives \$338 per month from the Social Security Administration and has \$1,188 in monthly expenses and debt. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Court will now review Plaintiff's complaint.

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen the complaint pursuant to § 1915(a). Federal courts are given the authority dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir.

1 1995).

2 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for
3 failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a
4 ruling on a question of law. *North Star Intern. v. Arizona Corp. Comm'n*, 720 F.2d 578, 580 (9th Cir.
5 1983). In considering whether the plaintiff has stated a claim upon which relief can be granted, all
6 material allegations in the complaint are accepted as true and are to be construed in the light most
7 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980).

8 Plaintiff appears to want to challenge a decision by the Social Security Administration (“SSA”)
9 denying benefits. Prior to filing suit, a plaintiff must exhaust administrative remedies. *See* 42 U.S.C.
10 § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curiam) (“Section
11 405(g) provides that a civil action may be brought only after (1) the claimant has been party to a hearing
12 held by the Secretary, and (2) the Secretary has made a final decision on the claim”). Generally, if the
13 SSA denies a claimant’s application for disability benefits, she can request reconsideration of the
14 decision. If the claim is denied at the reconsideration level, a claimant may request a hearing before an
15 Administrative Law Judge (“ALJ”). If the ALJ denies the claim, a claimant may request review of the
16 decision by the Appeals Council. If the Appeals Council declines to review the ALJ’s decision, a
17 claimant may then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

18 Once a plaintiff has exhausted administrative remedies, she can obtain judicial review of a SSA
19 decision denying benefits by filing suit within sixty (60) days after notice of a final decision. *Id.* An
20 action for judicial review of a determination by the SSA must be brought “in the district court of the
21 United States for the judicial district in which the plaintiff resides.” *Id.* The complaint should state the
22 nature of Plaintiff’s disability, when Plaintiff claims she became disabled, and when and how she
23 exhausted her administrative remedies. The complaint should also contain a plain, short, and concise
24 statement identifying the nature of Plaintiff’s disagreement with the determination made by the Social
25 Security Administration and show that Plaintiff is entitled to relief. A district court can affirm, modify,
26 reverse, or remand a decision if Plaintiff has exhausted her administrative remedies and timely filed a
27 civil action. However, judicial review of the Commissioner’s decision to deny benefits is limited to
28 determining: (a) whether there is substantial evidence in the record as a whole to support the findings of

1 the Commissioner; and (b) whether the correct legal standards were applied. *Morgan v. Commissioner*
 2 *of the Social Security Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

3 Along with her Motion/Application for Leave to Proceed *In Forma Pauperis*, Plaintiff includes
 4 an unfavorable ALJ decision dated August 27, 2013 and a letter she wrote to the Appeals Counsel.
 5 However, Plaintiff failed to include the Appeals Counsel's decision. Accordingly, the Court is unable
 6 to find that Plaintiff has exhausted her administrative remedies or that this action is timely filed.
 7 Further, Plaintiff failed to file a complaint that includes sufficient facts to state a claim for relief. As
 8 Plaintiff is proceeding *pro se*, the Court will provide Plaintiff with thirty days to file a complaint and
 9 correct the noted deficiencies.

10 Based on the foregoing and good cause appearing therefore,

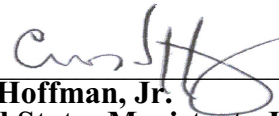
11 **IT IS HEREBY ORDERED** that Plaintiff's Motion/Application for Leave to Proceed *In*
 12 *Forma Pauperis* (#1) is **granted** with the caveat that the fees shall be paid if recovery is made. At this
 13 time, Plaintiff shall not be required to pre-pay the full filing fee of four hundred dollars (\$400.00).

14 **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to conclusion
 15 without the necessity of prepayment of any additional fees or costs or the giving of a security therefor.
 16 This Order granting leave to proceed in forma pauperis shall not extend to the issuance of subpoenas at
 17 government expense.

18 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file the Complaint (#1-2).

19 **IT IS FURTHER ORDERED** that the Complaint is **dismissed without prejudice** for failure
 20 to state a claim upon which relief can be granted, with leave to amend. Plaintiff will have **thirty (30)**
 21 days from the date that this Order is entered to file an Amended Complaint, up to and including May
 22 23, 2014, if she believes she can correct the noted deficiencies. Failure to comply with this Order may
 23 result in the Court recommending that this action be dismissed.

24 DATED the 23rd day of April, 2014.

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 26 
 27 C.W. Hoffman, Jr.
 28 United States Magistrate Judge